Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 90-473

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1990

STATE OF ARIZONA,

Petitioner,

-vs-

JOSEPH BARTLETT, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should the instant case be held pending resolution of Harmelin v. Michigan, when both cases call into question the validity of Solem v. Helm in reviewing mandatory sentences of imprisonment and, both cases assert that application of Solem's criteria violates notions of federalism?

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ARGUMENT

THE INSTANT CASE SHOULD BE HELD PENDING RESOLUTION OF HARMELIN V. MICHIGAN BECAUSE BOTH CASES CALL INTO QUESTION THE VALIDITY OF SOLEM V. HELM IN REVIEWING MANDATORY SENTENCES OF IMPRISONMENT AND, BOTH CASES ASSERT THAT APPLICATION OF SOLEM'S CRITERIA VIOLATES NOTIONS OF FEDERALISM.

This Court has granted the petition for certiorari in Ronald Allen Harmelin v. State of Michigan, ___ U.S. ___, 110 S. Ct. 2559, 109 L. Ed. 2d 742 (May 29, 1990), to address the question whether a mandatory sentence of life imprisonment without possibility of parole for possession of over 650 grams of cocaine violates the cruel and unusual punishment clause of the Eighth Amendment. In Harmelin, this Court has been asked to re-examine or overrule Solem v. Helm, 463 U.S. 277 (1983). Since petitioner, the State of Arizona, is also requesting that this Court

re-examine the application of Solem v. Helm to sentences of mandatory imprisonment, petitioner requests that the instant case be held for resolution in light of Harmelin.

This request is appropriate notwithstanding respondent Bartlett's claim (at page 62 of the brief in opposition to the petition) that the offenses and facts of the two cases are "totally different" from each other. Both cases are based on state courts' analyses of the cruel and unusual punishment provision of the Eighth Amendment to statutes involving mandatory sentences. Both cases suggest that the Solem doctrine has been misinterpreted and misused as a means of reviewing judicially unpopular state laws and erroneously setting aside mandatory sentences.

In Harmelin, the state court considered a mandatory life sentence without possibility of parole for a drug conviction. In Bartlett, the Arizona Supreme Court applied the Solem analysis to mandatory minimum consecutive sentences totaling 40 years without possibility of early release for convictions of sexual crimes against minors. The mere difference in the type of offense or the term of sentence is not, as respondent suggests, a significant factor in determining whether Bartlett should be held in conjunction with Harmelin. The important similarity between the two cases is whether the "objective factors" test of Solem v. Helm can be properly utilized to review non-capital, mandatory sentences. In this respect, this Court's resolution of the applicability of the Eighth

Amendment's prohibition against cruel and unusual punishment in Harmelin will provide necessary guidance and controlling precedent to the Arizona Supreme Court in Bartlett.

CONCLUSION

Petitioner, the State of Arizona, prays this Court to accept the petition for writ of certiorari in State of Arizona v. Joseph Bartlett, Jr., and reverse the decision of the Arizona Supreme Court that the mandatory sentence imposed violated the Eighth Amendment's prohibition against cruel and unusual punishment as interpreted by Solem v. Helm.

In the alternative, petitioner requests that the Court hold the instant case pending resolution of Harmelin v. Michigan.

DATED this 2nd day of November, 1990.

Respectfully submitted,

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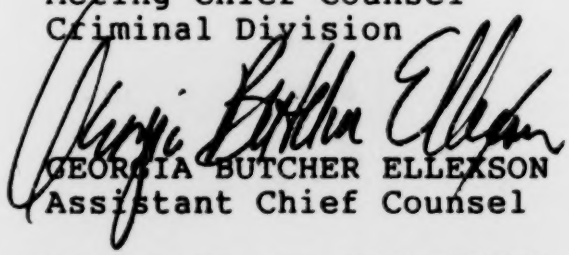

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CERTIFICATE OF SERVICE

THREE COPIES of this Brief were mailed this 2nd day of November, 1990, to:

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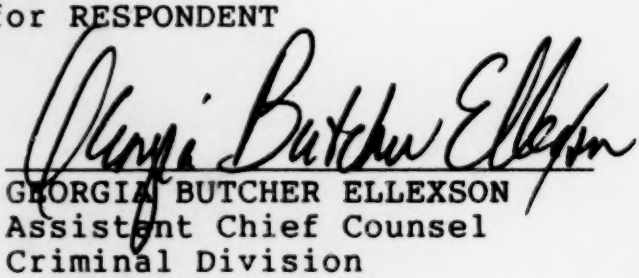

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